

**ATTORNEY GENERAL'S OPEN RECORDS AND MEETINGS OPINION**  
**No. 99-O-05**

DATE ISSUED: May 5, 1999

ISSUED TO: Cass County Coordinator Bonnie Johnson and  
Cass County State's Attorney Birch Burdick

**CITIZEN'S REQUEST FOR OPINION**

On April 23, 1999, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Martin Wishnatsky asking whether the Cass County Board of Commissioners violated N.D.C.C. §§ 44-04-19 and 44-04-20 by holding a meeting which was not open to the public.

**FACTS PRESENTED**

Mr. Wishnatsky appeared at the April 5, 1999, meeting of the Cass County Board of Commissioners (Board) and submitted a proposed corrupt practices ordinance. The proposal was submitted at a public hearing on another topic. The Board did not discuss or take action on the proposed ordinance at the meeting. A week after the meeting, Mr. Wishnatsky left a message with the Board's secretary asking about the procedure for having the proposed ordinance added to the agenda of a Board meeting. In response to his message, Mr. Wishnatsky received a letter from Board Chairperson Robbie Quick which stated in part:

The Board has reviewed the materials you distributed when you last appeared before the Cass County Commission. No one on the Board felt action to implement such an ordinance was necessary because the State law covering corrupt practices is adequate.

Mr. Wishnatsky believes this letter indicates that the Board held a meeting to discuss his proposed ordinance which was not preceded by public notice.<sup>1</sup>

In a letter to this office, County Coordinator Bonnie Johnson states the practice of the Board has been for the chairman to exercise some authority over items placed on the agenda of a Board meeting. If an

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<sup>1</sup> Mr. Wishnatsky asserts that the alleged meeting of the Board violated N.D.C.C. § 44-04-19, but does not allege that he was denied access to a Board meeting. We interpret Mr. Wishnatsky's opinion request as alleging that Board violated N.D.C.C. § 44-04-20 by failing to give public notice of its alleged meeting.

item can be handled better by a department head or other office, the chairman frequently responds to an inquiry by letter on behalf of the Board, with a copy to individual Board members about her agenda decisions. This is done without polling individual Board members, either by telephone or in person.

Most importantly, Ms. Johnson indicates that there were no discussions by the Board on Mr. Wishnatsky's proposal. Ms. Johnson drafted the letter to Mr. Wishnatsky. Commissioner Quick approved and signed the letter responding on the Board's behalf without convening a meeting to discuss the proposed ordinance. A copy of the letter was provided to each Board member.

#### ISSUE

Whether the Cass County Board of Commissioners held a meeting which was not preceded by sufficient public notice under N.D.C.C. § 44-04-20.

#### ANALYSIS

"Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity as defined in section 44-04-17.1 . . . ." N.D.C.C. § 44-04-20(1). For a "meeting" to occur as defined in N.D.C.C. § 44-04-17.1, a quorum of the members of a governing body must gather together to consider an item of public business. N.D.C.C. § 44-04-17.1(8). The definition of "governing body" refers to multi-member groups rather than one individual. N.D.C.C. § 44-04-17.1(6).

Here, only one of the five members of the Board was involved in responding to Mr. Wishnatsky's proposed ordinance. There was no "meeting" of the Board subject to N.D.C.C. § 44-04-19. As a result, no public notice was required under N.D.C.C. § 44-04-20.

#### CONCLUSION

It is my opinion that public notice was not required under N.D.C.C. § 44-04-20 because the Cass County Board of Commissioners did not hold a meeting to discuss Mr. Wishnatsky's proposed ordinance.

Heidi Heitkamp  
ATTORNEY GENERAL

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